DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 01-0171; 01-0172
Indiana Corporate Income Tax
For the Tax Years 1996, 1997, and 1998

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ISSUES

I. Taxpayer's Out-of-State Sales Subsidiaries – Adjusted Gross Income Tax.

Authority: IC 6-3-2-2(l); IC 6-3-2-2(m); Allied-Signal Inc. v. Director, Div. of Taxation, 504 U.S. 768 (1992); F.W. Woolworth v. Taxation and Revenue Dep't. of New Mexico, 458 U.S. 354 (1982); ASARCO, Inc. v. Idaho State Tax Comm'n., 458 U.S. 307 (1982); Exxon Corp. v. Dep't. of Revenue of Wisconsin, 447 U.S. 207 (1982); Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980).

Taxpayer takes issue with the audit's decision to include certain of taxpayer's subsidiaries within its Indiana consolidated income tax returns. The taxpayer had originally included within those returns only the subsidiaries which were incorporated within Indiana.

II. Georgia Throw-Back Sales.

Authority: 15 U.S.C.S. § 381; IC 6-3-2-2; IC 6-3-2-2(e); IC 6-3-2-2(n); IC 6-3-2-2(n)(1); Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447 (1992); Indiana Dept. of State Revenue v. Continental Steel Corp., 399 N.E.2d 754 (Ind. Ct. App. 1980); 45 IAC 3.1-1-53(5); 45 IAC 3.1-1-64; Ga. Code Ann. § 48-7-21(a).

Taxpayer maintains that the audit should not have "thrown-back" to Indiana the proceeds of sales made to Georgia customers. According to taxpayer, the sales should not have been thrown-back because it is subject to income tax within Georgia by virtue of its ownership of a land trust in that state.

III. Taxpayer's Delaware Trademark Holding Company.

Authority: IC 6-2.1-2-2; IC 6-3-1-1 et seq.; IC 6-3-2-2(a); Indiana Dept. of State Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264 (Ind. 1994); 45 IAC 1-1-51; 45 IAC 3.1-1-55.

Taxpayer argues that its Delaware trademark holding company was not subject to Indiana's corporate income tax scheme because the company did not have a "business situs" within the state.

IV. Abatement of the Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer asks that the Department exercise its discretion to abate the ten-percent negligence penalty.

STATEMENT OF FACTS

The taxpayer is a retail merchant which manufactures the products it sells. The products consists of remanufactured components. The majority of these products are remanufactured from salvaged parts. With the exception of certain specialty items, all of taxpayer's products are manufactured in Indiana.

Taxpayer has various wholly-owned subsidiaries operating both within the state and at out-of-state locations. One of the subsidiaries provides transportation for in-process and finished products between taxpayer's manufacturing facilities and its distribution facilities. Other subsidiaries operate exclusively as distribution warehouses for the parent company.

An audit was conducted of taxpayer's business activities during the years 1996, 1997, and 1998. The audit made certain adjustments including adjustments which resulted in additional corporate income tax liabilities for all three years. The taxpayer disagreed with the adjustments and submitted a protest. An administrative hearing was conducted, and this Letter of Findings followed.

DISCUSSION

I. Taxpayer's Out-of-State Sales Subsidiaries – Adjusted Gross Income Tax.

The audit determined that certain of taxpayer's out-of-state subsidiaries had a "unitary business" relationship with taxpayer. As a result, the audit found that taxpayer – having elected to make a consolidated filing for its adjusted gross income tax – was required to include all qualified affiliated members in taxpayer's consolidated filing. Taxpayer maintains that the income of the out-of-state subsidiaries, not incorporated within Indiana, should not have been considered when calculating taxpayer's adjusted gross income tax.

Both taxpayer and the audit approach the issue as to whether or not the subsidiaries had "nexus" with the state of Indiana. The issue is more properly addressed as whether the taxpayer and its subsidiaries should have been treated as a single taxpayer (unitary

treatment) and, thereafter, required to file a combined return in order to more fairly reflect the taxpayer's Indiana income during the years at issue.

Some of taxpayer's subsidiaries operate as out-of-state distribution warehouses for delivery of taxpayer's products to local customers. Some of these subsidiaries operate out of one location. Two of these subsidiaries operate additional branch distribution centers. Each out-of-state location has a general manager responsible for that location's activities. Taxpayer's customers place orders at taxpayer's Indiana location. Once received, the order is processed, the customer's credit checked, and the order is given final approval at the Indiana location. After taxpayer's inventory has been checked, the order is electronically transferred to the local subsidiary from where delivery is arranged.

Yet another subsidiary operates to transport in-process goods and finished goods between taxpayer's manufacturing facilities. This transportation subsidiary also transports finished goods from the taxpayer's Indiana location to the various out-of-state distribution subsidiaries.

According to the audit, all orders flow through taxpayer's centralized order processing department at taxpayer's central Indiana location. Most of taxpayer's customers make payment to the central Indiana location. If a local subsidiary does receive a customer payment, that payment is transferred to taxpayer's local Indiana bank account.

According to the audit, the subsidiaries have their corporate headquarters in Indiana; each subsidiary has the same Indiana corporate officers; management and administrative decisions are made at the Indiana location; the subsidiaries' boards of directors meet at the Indiana location; and the subsidiaries' corporate records and tax returns are prepared and maintained at the Indiana location. In addition, the subsidiaries' accounting, purchasing, manufacturing, advertising, inventory management, data processing, and accounts receivable are all controlled and managed by taxpayer at its Indiana location.

Taxpayer maintains that the subsidiaries exercise a degree of individual autonomy. All of the subsidiaries' employees work at or out of the local out-of-state location. Certain records – including bills of lading, invoices, cash accounting, return credit memos, inventory records, maintenance records – are maintained at the local subsidiary. In addition, the manager of each local subsidiary has the authority to reject an order otherwise approved at the Indiana location. Daily operational decision-making power is vested with the manager of the local subsidiary.

IC 6-3-2-2(m) provides as follows:

> In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interest, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

In addition, IC 6-3-2-2(l) vests both taxpayers and the Department with authority to allocate and apportion a taxpayer's income within and among the members of a unitary group of related entities.

> If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable;
>
> > (1) separate accounting;
> >
> > (2) the exclusion of any one (1) or more of the factors;
> >
> > (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
> >
> > (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

It is apparent from the language contained with IC 6-3-2-2(l) that the standard apportionment filing method is the preferred method of representing a taxpayer's income derived from Indiana sources. The alternate methods of allocation and apportionment – including the combined reporting method – are only employed when the standard apportionment formula does not fairly reflect the taxpayer's Indiana income.

The first issue is whether the audit was correct in determining that taxpayer and its various subsidiaries warranted treatment as a unitary group. If, after determining that a unitary relationship exists, the second issue is whether requiring taxpayer to file a combined return is necessary to fairly reflect the taxpayer's and its subsidiaries' Indiana income.

For purposes of resolving the unitary group issue, the Supreme Court has developed a three-part test to determine whether a unitary relationship exists between different entities. The test consists of the following factors; common ownership, common management, and common use or operation. Allied-Signal Inc. v. Director, Div. of Taxation, 504 U.S. 768 (1992); F.W. Woolworth v. Taxation and Revenue Dep't. of New Mexico, 458 U.S. 354 (1982); ASARCO, Inc. v. Idaho State Tax Comm'n., 458 U.S. 307 (1982); Exxon Corp. v. Dep't. of Revenue of Wisconsin, 447 U.S. 207 (1982); Mobil Oil Corp. v. Commissioner of Taxes of Vermont, 445 U.S. 425 (1980).

Because each of the subsidiaries is wholly owned by the Indiana parent company, the first factor in the three-part test – "common ownership" – is readily met.

Although taxpayer has demonstrated that the individual subsidiaries exercise a degree of managerial autonomy, the available information indicates that the individual subsidiaries

and taxpayer parent company are largely governed under a common management scheme. The information indicates that the subsidiaries on-site management personnel are authorized to make decisions relating to immediate, day-to-day issues. However, the information also indicates the authority for the over-all governance of the individual subsidiaries remains largely reserved to the taxpayer parent company. A fair consideration of the relevant information weighs in favor of finding that the second factor in the three-part test – "common management" – is also met.

The third test is that of common operation or use. Evidence of common operation exists where certain functions are performed for the group by the parent. In taxpayer's case, the information indicates that all customer orders are received and processed by the Indiana parent. Although each subsidiary maintains a local checking account, most of the subsidiaries' purchases were made through the parent's central account with costing to the individual subsidiary. Corporate records and tax returns for each of the subsidiaries are prepared and maintained at the Indiana parent's location. With one exception, the subsidiaries have all designated the Indiana parent as their corporate headquarters. The subsidiaries are managed by the identical corporate officers and those corporate officers are located at the Indiana parent. Management and decisions are made at the Indiana parent's location.

Taxpayer, along with the individual subsidiaries, function jointly to construct and deliver rebuilt components to taxpayer's customers. There is little to indicate that the subsidiaries perform – or are capable of performing – independent, self-contained services for a particular sub-set of local customers. There is no indication that the transportation subsidiary offers independent transportation services. There is no indication that the distribution subsidiaries offer independent warehousing or distribution services. Rather, the evidence weighs substantially in favor of a determination that the subsidiaries are integrated components of a "common operation." Based upon this information, the audit did not err when it concluded that the subsidiaries and the parent shared a common use or operation.

Based on their common ownership, common management, and common use or operation, the Department finds that the taxpayer and its subsidiaries exhibit a unitary relationship.

The final issue is whether, under IC 6-3-2-2(l), requiring the taxpayer and its subsidiaries to file a combined return is necessary to "fairly represent" the taxpayer's Indiana income. From the information contained within the file, it appears that the Indiana parent and its subsidiaries were so functionally integrated, that the filing of a combined return was necessary in order to avoid distorting and instead fairly portray the taxpayer's Indiana source income.

Accordingly – for purposes of calculating taxpayer's Indiana adjusted gross income under IC 6-3-2-2(l), (m) – the audit was justified in its determination that the taxpayer and its subsidiaries should be treated as a unitary group and required to file a combined return in order to fairly reflect taxpayer's Indiana income.

FINDING

Taxpayer's protest is respectfully denied.

II. Georgia Throw-Back Sales.

Taxpayer argues that the audit erred when it "threw back" Georgia sales to Indiana. Taxpayer maintains that the throw-back was inappropriate because the taxpayer was subject to income taxes in Georgia.

The audit determined that, for purposes of calculating taxpayer's Indiana tax liability, sales made to Georgia should be allocated back to Indiana because the sales were made within a state where the taxpayer was not subject to a state income tax. The audit was apparently basing its decision on 45 IAC 3.1-1-53(5) which states that "[i]f the taxpayer is not taxable in the state of the purchaser, the sale is attributed to [Indiana] if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state." Such sales are designated as "throw-back" sales. Id.

The basic rule is found at IC 6-3-2-2. IC 6-3-2-2(e) provides that "[s]ales of tangible personal property are in this state if . . . (2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and . . . (B) the taxpayer is not taxable in the state of the purchaser." IC 6-3-2-2(n) provides that "[f]or purposes of allocation and apportionment of income . . . a taxpayer is taxable in another state if: (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." Therefore, in order to properly allocate income to a foreign state, taxpayer must show that one of the taxes listed in IC 6-3-2-2(n)(1) has been levied against him or that the state has the jurisdiction to impose a net income tax regardless of "whether, in fact, the state does or does not." Id.

According to taxpayer, the throw-back of the Georgia sales was improper because, "The auditor ignored the fact that the parent company is subject to income taxes in Georgia due to its ownership in a land trust in Georgia."

Georgia imposes a net income tax on corporations. Specifically, Ga. Code Ann. § 48-7-21(a) provides as follows: "Every domestic corporation and every foreign corporation shall pay annually an income tax equivalent to 6 percent of its Georgia taxable net income. Georgia taxable net income of a corporation shall be the corporation's taxable income from property owned or from business done in this state."

Assuming for the moment that taxpayer's ownership of a land trust brings it within the purview of Georgia's corporate income tax scheme, it does so apparently to the extent that income from the land trust is subject to Georgia's income tax. However, the unresolved issue is whether taxpayer's income – derived from sales within Georgia – is

subject to that state's net income tax by virtue of the taxpayer's activities having established a Georgia nexus.

15 U.S.C.S. § 381 (Public Law 86-272) controls those occasions in which a state may properly impose a tax on the net income, derived from sources within that state, by foreign (out-of-state) taxpayers. 15 U.S.C.S. § 381 sets a minimum standard for the imposition of a state income tax based on the solicitation of interstate sales. Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S.Ct. 2447, 2453 (1992). 15 U.S.C.S. § 381 prohibits a state (Georgia) from imposing its net income tax on the foreign (Indiana) taxpayer if the foreign taxpayer's only business activity within that state is the solicitation of sales. Georgia may not impose its net income tax on income derived from an out-of-state entity's business activities unless those business activities exceed the mere solicitation of sales. 15 U.S.C.S. § 381(a), (c). Conversely, the effect of Indiana's throw-back rule is to revert sales receipts back to the state, from where the goods were shipped, in those situations where 15 U.S.C.S. § 381 deprives the purchaser's own state of the authority to impose a net income tax. 45 IAC 3.1-1-64. In effect, 15 U.S.C.S. § 381 allows Indiana to tax out-of-state business activities, without violating the Commerce Clause and without the possibility of subjecting taxpayer to double taxation, because Indiana's right to tax those out-of-state activities is derivative of the foreign state's own, taxing authority. In every transaction, at least one state has the power to tax income derived from the sale of tangible personal property; if the state wherein the sale occurred is forbidden to do so by 15 U.S.C.S. § 381, then the income is "thrown-back" to the originating state.

Accordingly, the resolution of taxpayer's protest does not depend on whether taxpayer pays Georgia net income on income attributable to ownership of the Georgia land trust, but whether "taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States." 45 IAC 3.1-1-64.

Based upon the information supplied by taxpayer, the issue cannot be resolved in taxpayer's favor. There is insufficient evidence to indicate that taxpayer's Georgia activities exceeded the "mere solicitation" standard set out in 15 U.S.C.S. § 381 as defined by Indiana Dept. of State Revenue v. Continental Steel Corp., 399 N.E.2d 754 (Ind. Ct. App. 1980).

FINDING

Taxpayer's protest is respectfully denied.

III. Taxpayer's Delaware Trademark Holding Company.

The audit concluded that the Delaware subsidiary's income producing activities occurred within Indiana subjecting the subsidiary's income to the state's taxing authority. Taxpayer parent company (hereinafter "taxpayer") argues that its Delaware subsidiary (hereinafter "holding company") does not have a "business situs" within Indiana and the

state was without authority to tax its 1996, 1997, and 1998 income. In support of that argument, taxpayer maintains that the holding company's assets and operations are directed and managed in the State of Delaware and that the holding company's business and tax situs are in Delaware.

The holding company was incorporated in the state of Delaware. Taxpayer entered into a "Trademarks Assignment Agreement" whereby taxpayer transferred ownership of certain intellectual property to the holding company. In exchange, the holding company issued taxpayer 1,000 shares of stock. As a result, taxpayer became the holding company's sole shareholder. By the terms of their agreement, taxpayer agreed to pay 6 percent of its annual wholesale sales as compensation for the uninterrupted privilege of using the intellectual property in conjunction with the on-going manufacture of taxpayer's products. The available information indicates that the holding company subsequently transferred substantial amounts of that income back to taxpayer.

Taxpayer maintains that its holding company is a valid entity, established for the valid business purpose of "protect[ing] valuable intellectual property rights." According to taxpayer, the holding company has no business activities within Indiana and that all of the holding company's business activities occur in Delaware. To that end, taxpayer points out that the holding company performs certain activities entirely within Delaware; the holding has a Delaware bank account, the stockholder and directors' meetings are held in Delaware, the holding company's minute books are located in Delaware, the officers perform their duties in Delaware, and the holding company's income is distributed by means of a Delaware bank account. Further, taxpayer argues that the formation of the holding company was based upon "genuine business purposes" including the protection of the intellectual property "in the event of some catastrophic lawsuit." In addition, taxpayer theorizes that the "existence of a separate trademark protection company . . . allows for the future additional licensing of the marks."

The intellectual property consists largely of four trademarks which taxpayer developed over the course of its Indiana business activities. The four trademarks are used to distinguish taxpayer's products from products produced by its competitors. The four trademarks consist of words displayed in stylized print accompanied by cartoon-like depictions. At the time the trademarks were transferred to the holding company, the taxpayer had placed a value of on the trademarks based upon the income-producing capabilities of those assets.

The essence of taxpayer's argument is that all business activities associated with intellectual property occur in Delaware, and that the Delaware holding company does not have an Indiana business situs.

A. Adjusted Gross Income Tax.

Indiana imposes an adjusted gross income tax on income derived from sources within the state. The adjusted gross income tax, IC 6-3-1-1 et seq., is an apportioned tax specifically designed to reach income derived from interstate transactions. Indiana Dept. of State

Revenue v. Bethlehem Steel Corp., 639 N.E.2d 264, 266 n. 4 (Ind. 1994). The legislature has defined "adjusted gross income" as follows:

> (1) income from real or tangible property located in this state; (2) income from doing business in this state; (3) income from a trade or profession conducted in this state; (4) compensation for labor or services rendered within this state; and (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter. IC 6-3-2-2(a).

In order for Indiana to tax the income derived from an intangible, the intangible – such as the Delaware holding company's intellectual property – must have acquired a "business situs" within the state. 45 IAC 3.1-1-55 states that "[t]he situs of intangible personal property is the commercial domicile of the taxpayer . . . unless the property has acquired a 'business situs' elsewhere. 'Business situs' is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property."

As taxpayer so vigorously maintains, the holding company's commercial domicile is found in Delaware. The corporate activities associated with the maintenance and governance of the Delaware holding company's business affairs – corporate meetings, record keeping, local financial decisions – occur largely within that state. However, it is equally apparent that the holding company's intellectual property has acquired a "business situs" within Indiana. The Delaware holding company has licensed taxpayer to employ the intellectual property within Indiana in conjunction with taxpayer's Indiana manufacturing activities. The substantial value attached to the intellectual property exists solely in the ability to "place" that intellectual property within this state and to derive the economic benefits attributable entirely to the intellectual property's Indiana business situs. The "intellectual property" could accurately and fully be reproduced on a single sheet of typing paper. That this "intellectual property" somehow has an economic vitality severable from taxpayer's Indiana manufacturing activities – and attributable exclusively to the holding company's physical Delaware location – is an entirely illusory assertion. It would be a meaningless and unprofitable exercise in formalistic property rights for the holding company to abrogate its licensing agreement with taxpayer and husband the intellectual property entirely within Delaware. In addition, given the close relationship between taxpayer and the holding company, it would appear unlikely that the holding company would enter into a parallel relationship with one of taxpayer's competitors by which the competitor would become entitled to make use of the trademarks associated with the taxpayer's own products.

As the regulation states, "'business situs' is the place at which [the] intangible personal property is employed as capital . . . ." 45 IAC 3.1-1-55. The place at which the "value attaches to the [intellectual] property is within the state of Indiana. Id.

The income attributable to the intellectual property falls within the purview of the state's adjusted gross income tax scheme because the value of that property derives entirely from the ability to assign the intellectual property to taxpayer and to reap the benefits derived from exploiting the intellectual property through activities occurring entirely within this state.

Therefore, because the intangible personal property has acquired an Indiana business situs, and – as set out in part I of this Letter of Findings - inclusion of the Delaware holding company within the combined return is necessary to fairly represent the unitary group's Indiana adjusted gross income.

B. Gross Income Tax.

In addition to the adjusted gross income tax, Indiana imposes a tax, known as the "gross income tax" on the "taxable gross income" of a taxpayer who is a resident or domiciliary of Indiana and on the taxable gross income from Indiana sources by a taxpayer who is not a resident or domiciliary of Indiana. IC 6-2.1-2-2.

Under the regulations governing the gross income tax, "taxable gross income" includes income that is derived from "intangibles." 45 IAC 1-1-51. The term "intangibles" includes:

> notes, stocks in either foreign or domestic corporations, bonds, debentures, certificates of deposit, accounts receivable, brokerage and trading accounts, bills of sale, conditional sales contracts, chattel mortgages, "trading stamps," final judgments, lease royalties, certificates of sale, choses in action, *and any and all other evidences of similar rights capable of being transferred, acquired or sold.* (*Emphasis added*). Id.

In order for Indiana to impose the gross income tax on income derived from the Delaware holding company's intangibles, the Department must determine that the income is derived from a "business situs" within the state. Id. The regulation states that a taxpayer has established a "business situs" within the state "[i]f the intangible or the income derived therefrom forms an integral part of a business regularly conducted at a situs in Indiana . . . ." Id. Once the taxpayer has established a "business situs" within the state, "and the intangible or the income derived therefrom is connected with that business, either actually or constructively, the gross receipts of those intangibles will be required to be reported for gross income tax purposes." Id.

It is apparent that the income derived from the Delaware holding company's licensing of the intellectual property, is income derived from a "business situs" within Indiana and is properly subject to the state's gross income tax scheme. The intellectual property is exclusively licensed to the Indiana taxpayer. The intellectual property is "localized" within Indiana in the sense that the Indiana taxpayer employs the property to enhance the value of its goods manufactured within this state. The Delaware holding company would

derive no income from the intellectual property except for the fact that the intellectual property was licensed for use within Indiana and then actually used within Indiana in conjunction with the manufacturing activities themselves occurring within the state. The holding company's income is based entirely on a fixed percentage of taxpayer's wholesale sales; in turn, those wholesale sales are derived from taxpayer's Indiana manufacturing activities.

Accordingly, because the intellectual property has acquired a business situs within the state and because the income at issued is "connected with that business, either actually or constructively," the income is subject to the state's gross income tax.

FINDING

Taxpayer's protest is respectfully denied.

IV. Abatement of the Ten-Percent Negligence Penalty.

Taxpayer protests the assessment of the ten-percent negligence penalty on the amount of tax deficiency determined at the time of the original audit.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Taxpayer has presented evidence sufficient to establish to establish that its failure to pay the deficiency was due to reasonable cause and not due to willful neglect.

FINDING

Taxpayer's protest is sustained.